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Arizona Corporation Commission

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JUL 14 2003

Attorneys for Palo Verde Utilities Company and Santa Cruz Water Company

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF PALO VERDE UTILITIES COMPANY  
FOR AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY.

DOCKET NO. SW-03575A-03-0167

IN THE MATTER OF THE APPLICATION  
OF SANTA CRUZ WATER COMPANY,  
FOR AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY.

DOCKET NO. W-03576A-03-0167

**RESPONSE TO STAFF REPORT**

Applicants Palo Verde Utilities Company ("Palo Verde") and Santa Cruz Water Company ("Santa Cruz") (collectively Palo Verde and Santa Cruz will be referred to herein as the "Utilities") hereby provide their response to the June 30, 2003 Staff Report in the above-captioned dockets. For consistency and convenience, this response adopts the same format as the Staff Report, including the using the same headings and organizational structure.

As a preliminary matter, both Staff and the Utilities seek the same relief in these dockets – the extension of the Utilities' respective CC&Ns as requested in the Utilities' joint application. However, Staff and the Utilities have chosen to arrive at this point by different paths. Put simply, and as discussed below, the Staff Report contains a number of factual errors, misstatements of the law and unnecessary and inappropriate criticisms of the Utilities.

Thus, despite the parties' agreement that the Utilities' application should be approved, the

1 Utilities are forced to file this detailed response to ensure that the record before the Commission  
2 contains accurate facts, in addition to reflecting the Utilities' good faith disagreement with the  
3 Staff's witnesses over several legal issues. Furthermore, as discussed herein, the Utilities do not  
4 agree that all of the conditions recommended by Staff are necessary and appropriate, and have  
5 recommended changes to those conditions in the **Recommendations** section of this Response. In  
6 the end, the Utilities remain confident that the record will demonstrate both a need for water and  
7 wastewater utility service in the area covered by the requested CC&N extensions and that Palo  
8 Verde and Santa Cruz, two public service corporations with exemplary compliance records, are fit  
9 and able to meet that demand.

## 10 RESPONSE TO STAFF REPORT

### 11 **Introduction**

12 For the most part, the Staff Report accurately characterizes the procedural history of these  
13 dockets. On March 20, 2003, the Utilities' filed a single combined application seeking an  
14 extension of their respective CC&Ns to include approximately 3,500 acres of real property in  
15 northwestern Pinal County (the "Extension Application"). The Extension Application was based  
16 on requests for service by several property owners and developers planning residential  
17 developments in the near future. Staff Report at 4-5.

18 Although the Extension Application contained all of the information required under the  
19 Commission's rules and regulations, on April 14, 2003, Staff nevertheless declared the filing  
20 insufficient and then insisted that additional documentation be submitted before the Extension  
21 Application would be deemed sufficient. Rather than challenge Staff's improper sufficiency  
22 determination under the applicable provisions of the Arizona Administrative Code, the Utilities'  
23 consented to allow Staff to engage in pre-sufficiency discovery and promptly provided the  
24 additional information requested. The Extension Application was eventually deemed sufficient  
25 on May 14, 2003, nearly 60 days after it was filed.

26 The Staff Report also correctly reflects that the Utilities filed a Notice of Extension of

1 Service on April 2, 2003 ("Extension Notice"). The Extension Notice was prompted by the  
2 Utilities' concerns, as well as those of the affected landowners and developers, over the very  
3 types of delays caused by Staff's insufficiency letter and reflected the Utilities' intent to extend  
4 service to certain property pursuant to A.R.S. § 40-281.B. Contrary to the Staff Report (at 3),  
5 however, the Extension Notice covered only some of the property covered by the Extension  
6 Application, approximately 1,600 acres, not the entire 3,500 acres covered by the Extension  
7 Application, because not all of the property owners and/or developers required service to be  
8 initiated at the same time.

### 9 **Background**

10 The Utilities agree with this section of the Staff Report except that there are two  
11 essentially immaterial errors that should be corrected for the record. The name of the original  
12 incorporator is Mr. Michael Reinbold, not "Reinhold," and he is a principal in Pecan Valley  
13 Investments, LLC, not "Pecan Investments, LLC." See Staff Report at 1.

### 14 **Notice of Asset Transfer**

15 This section of the Staff Report is both incomplete and premised on Staff witnesses'  
16 unsupported view of the requirements of A.R.S. § 40-285, which the Utilities' respectfully  
17 suggest is legally flawed. It is true that the Utilities filed a document captioned "*In the Matter of*  
18 *the Application for Approval of Change in Business Form from a Corporation to an LLC*" on  
19 August 22, 2001. However, the title of the filing was actually "Notice of Filing Documents  
20 Evidencing Change of Business Form From Corporation to LLC." In other words, this was  
21 simply a notice and no relief was sought by the Utilities at that time. Instead, the sole purpose of  
22 the August 2001 pleading filed by Palo Verde and Santa Cruz was to provide notice of their  
23 change in business form.

24 This change of business form involved a conversion of two Arizona corporations to two  
25 Arizona limited liability companies. This was a seamless transition from one type of legal entity  
26 to another with the assets being transferred by operation of Arizona law. No change in actual

1 ownership, management or utility operations occurred. The change was undertaken to provide for  
2 organizational consistency between the parent and the subsidiaries. Neither Palo Verde nor Santa  
3 Cruz sold, leased, assigned, mortgaged or otherwise disposed of or encumbered the whole or any  
4 part of their utility plant, nor did either utility merge any part of its plant with the plant of another  
5 public service corporation, as such actions are contemplated in A.R.S. § 40-285 as being actions  
6 requiring prior Commission approval. Thus, the Utilities believed in good faith then, as they do  
7 today, that Commission approval was not required.

8 Moreover, for nearly two years, the Utilities have maintained a reasonable belief that Staff  
9 agreed. On September 10, 2001, Staff served data requests concerning the August 2001 notice  
10 filing. On September 17, 2001, the Utilities' objected to Staff's data requests, asserting that,  
11 despite the pleading caption inadvertently using the terms "Application for Approval," the notice  
12 filing sought no affirmative relief from the Commission. Notably, Staff did not respond or  
13 otherwise challenge the Utilities' claim that Commission approval of the change in business form  
14 was not required. Therefore, on September 27, 2001, in order to eliminate any further confusion,  
15 the Utilities filed a Request for Administrative Closure of the Docket initiated with the August  
16 22, 2001, filing, seeking simply to have the Commission update its records to reflect the change  
17 in business form.

18 Ultimately, on April 15, 2003, the Commission closed the docket initiated on August 22,  
19 2001, expressly noting that no objection to the request was made by Staff.<sup>1</sup> Had Staff believed  
20 further proceedings were required, it had ample opportunity between September 27, 2001 and  
21 April 15, 2003 to inform the Utilities as well as the Commission of its position. Certainly, the  
22 Utilities have conducted business for the past two years with a reasonable good faith belief that  
23 nothing further was required and Staff should not be heard now to argue that the Utilities are of

24 <sup>1</sup> Further, the Utilities have made at least two other filings since the change of business form, neither of  
25 which prompted Staff to voice its belated concern over the impact of the change. *See* Staff Report at 1  
26 (discussing a August 14, 2002 filing by the Utilities). *See also* Santa Cruz' November 19, 2002 Request  
for Rate Review.



1 “questionable status as authorized utilities.” See Staff Report at 4.<sup>2</sup>

## 2 **Utility Asset Ownership**

3 Staff claims that the “total ownership of Santa Cruz and Palo Verde is not easily  
4 understood.” See Staff Report at 2. To the contrary, the ownership of the Utilities is readily  
5 understood. Pecan Valley Investments, LLC owned all of the interests in the Utilities until  
6 ownership was recently transferred to Phoenix Capital Partners, LLC and Phoenix Utility  
7 Management, LLC. As a consequence of the recent ownership transfers, wherein all membership  
8 units in the two LLCs were conveyed, the Utilities’ current ownership structure is as follows:

- 9 • Santa Cruz Water Company, LLC:  
Phoenix Capital Partners, LLC owns 99%  
10 Phoenix Utility Management, LLC owns 1%
- 11 • Palo Verde Utilities Company, LLC:  
Phoenix Capital Partners, LLC owns 99%  
12 Phoenix Utility Management, LLC owns 1%

13 Furthermore, the current ownership structure of the parent company is as follows:

- 14 • Phoenix Capital Partners, LLC:  
Pecan Valley Investments, LLC 64.2%  
15 Shea Homes, LP 34.8%  
16 Phoenix Utility Management, LLC 1%

17 Beyond the belated assertion of Staff’s mistaken claim that the status of the Utilities is in  
18 question because the Commission never approved the conversion from corporations to limited  
19 liability companies in 2001 (see Staff Report at 2-3), the actual relevance of these organizational  
20 issues to the relief requested in these dockets is at best unclear.<sup>3</sup> As discussed above, the Utilities

21 <sup>2</sup> Staff’s reference to Decision No. 61943 (September 17, 1999) is of no consequence. Staff Report at 2.  
22 The Commission did not predicate the issuance of the Utilities’ CC&N’s on the then existing stock  
23 ownership and, although ownership of the Utilities has recently changed, as explained in the section  
24 entitled **Utility Asset Ownership**, *infra*, the Commission does not regulate the transfer or sale of a public  
service corporation’s lawfully issued stock or LLC membership units. See *Corporation Commission v.*  
*Consolidated Stage Co.*, 63 Ariz. 257, 263, 161 P.2d 110, 112 (1945).

25 <sup>3</sup> The statement in the Staff Report that Pecan Valley Investments continues to own the Utilities (at 3) is in  
26 error and, unquestionably, the Staff witnesses are confused over the actual ownership of the Utilities.  
Notably, however, despite substantial informal, pre-sufficiency discovery and three sets of data requests  
after the Extension Application was deemed sufficient, Staff made absolutely no inquiry of the Utilities

1 disagree with the Staff witnesses' legal conclusion, and, as the Staff Report correctly points out,  
2 the Utilities believe that Staff is needlessly emphasizing "form rather than substance." Staff  
3 Report at 3. Requiring public service corporations to seek and obtain approval to transfer assets  
4 already transferred by operation of law when the utility merely alters its form, without any  
5 material change in ownership, control or operations, is a needless exercise that ties up the  
6 Commission's and Utilities' resources.

### 7 **Notice of Intent to Serve**

8 In this section of the Staff Report, the Staff witnesses again present an erroneous and  
9 incomplete picture of the Utilities' actions and rights under Arizona law. Put bluntly, the Utilities  
10 and Staff have a fundamental disagreement over the right of a public service corporation to  
11 construct plant and extend service outside certificated service areas pursuant to A.R.S. § 40-  
12 281.B.<sup>4</sup>

13 From the outset, it must be recognized that the Commission's power over certificates of  
14 convenience and necessity is "far from a plenary power. To the contrary, it is a legislative power  
15 delegated to the Commission subject to restrictions as the legislature deems appropriate." *Tonto*  
16 *Creek Estates Homeowners Association v. Arizona Corporation Commission*, 177 Ariz. 49, 56,  
17 864 P.2d 1081, 1088 (App. 1993). This the legislature has done in A.R.S. § 40-281.B, which  
18 reads in relevant part:

19 The section shall not require such corporations to secure a  
20 certificate for an extension within a city, county or town within  
21 which it has lawfully commenced operations, or for an extension  
22 into territory either within or without a city, county or town,  
contiguous to its street railroad, or line, plant or system, and not  
served by a public service corporation of like character, or for an

23 concerning their ownership structure. Therefore, this does not appear to be especially significant to Staff,  
24 and its discussion in the Staff Report are perplexing.

25 <sup>4</sup> Although largely immaterial, the Utilities are at a loss to explain the basis for Staff's representation that  
26 they sought "Staff's opinion of a utilities [sic] right to extend facilities" in March 2003. As discussed  
herein, the relevant statute and caselaw are straightforward.

1 extension within or to territory already served by it, necessary in  
2 the ordinary course of business.

3 The Arizona Supreme Court has explained that the purpose of this statute "is to allow for the  
4 orderly growth of a certificated area without unnecessary and repetitious administrative  
5 proceedings." *Electrical District No. 2 v. Arizona Corporation Commission*, 155 Ariz. 252, 256  
6 745 P.2d, 1383, 1387 (1987). The court further recognized that the statute identifies three  
7 separate circumstances in which a public service corporation may extend service without first  
8 securing an extension of its CC&N from the Commission. *Id.*<sup>5</sup> At least two of these  
9 circumstances are satisfied in this case.

10 First, the "within the same city, town or county" test is satisfied. The Utilities have begun  
11 constructing plant outside their respective CC&Ns to serve approximately 1,600 acres of property  
12 (also included in the Extension Application) located within Pinal County, in the immediate  
13 vicinity of their existing certificated service areas, where both Palo Verde and Santa Cruz have  
14 lawfully commenced service.<sup>6</sup> The Staff Report, however, is silent concerning this portion of the  
15 statute.

16 For one thing, the Commission does not have any rules and regulations requiring notice of  
17 extensions of service to non-contiguous properties "within the same city, town or county."

18  
19 <sup>5</sup> Staff's claim that the Utilities "are acting contrary to the policy set forth in Decision No. 55298" is  
20 inapposite. Staff Report at 4. Although Staff offers no specific reference to that Decision, presumably  
21 Staff is referring to the Commission's finding that a regulated utility cannot "expand its territory if it is not  
22 touching upon the territory into which it plans to expand" without prior Commission approval. Decision  
23 No. 55298 at 13. However, the Arizona Supreme Court's decision in *Electrical District No. 2* was issued  
after Decision No. 55298. The court explained in that case that there are three circumstances in which a  
utility can expand service under A.R.S. § 40-281.B, including where the expansion areas is "within the  
same city, town or county." 155 Ariz. at 256, 745 P.2d at 1387. The Supreme Court's decision is binding  
on the Commission irrespective of the findings in its prior decision. *See, e.g., Tonto Creek Estates*, 177  
Ariz. at 56, 864 P.2d at 1088.

24 <sup>6</sup> As Staff is fully aware, the Utilities have limited their actions to constructing plant and have so far  
25 refrained from providing service in these areas in light of the dispute with Staff over the rights afforded by  
26 A.R.S. § 40-281.B and because service will not be required before October 2003, when a decision of the  
Commission is anticipated in these dockets.

1 Compare A.A.C. R14-2-402.C and R14-2-602.B.<sup>7</sup> Moreover, the Staff witnesses' interpretation  
2 of this portion of the statute is illogical. Specifically, the Legal Division has previously informed  
3 the Utilities that the "within the same city, town or county" language applies only when the utility  
4 already has a CC&N that allows service within a defined city, county or town, rather than in an  
5 area defined by, for example, a metes and bounds description. See Letter dated May 16, 2003,  
6 copy attached hereto as Exhibit 1. Staff's reading of this provision of the statute renders it  
7 meaningless. If, for example, a utility had a CC&N that allowed it to serve in the City of  
8 Phoenix, it would not need to extend service pursuant to A.R.S. § 40-281.B to other portions of  
9 the City in which it had previously served. It is well settled that statutes should be given a  
10 sensible construction to accomplish legislative intent and should be interpreted in a manner that  
11 avoids an absurd construction or one that will make a statute invalid or meaningless. See, e.g.,  
12 *Fry v. South Phoenix Volunteer Fire Company*, 71, Ariz. 163, 167-68, 224 P.2d 651, 564 (1950)

13 Second, the "contiguous" test under A.R.S. 40-281.B is satisfied with respect to the  
14 property covered by the Extension Notice because the property to which the Utilities proposed to  
15 extend service is contiguous, i.e., actually touching the Utilities' CC&Ns. See Map, copy  
16 attached as Exhibit 2.<sup>8</sup> This position is consistent with the holding of the Arizona Supreme Court  
17 in *Electrical District No. 2* that two properties are contiguous when they are actually touching.  
18 155 Ariz. at 257, 745 P.2d at 1388. For example, as shown on the attached map (Exhibit 2),  
19 Section 24 is "contiguous," i.e., actually touching the Utilities' CC&N, and is therefore  
20 appropriately included in the Extension Notice. In contrast, Section 26, portions of which are

21  
22 <sup>7</sup> Although both code provisions are entitled "Additions/extensions to existing Certificates of Convenience  
23 and Necessity," both are expressly limited to requiring notice when a utility "proposes to extend utility  
24 service to a person not located within its certificated service area, but located in a non-certificated area  
25 contiguous to its certificated service area" (emphasis supplied).

26 <sup>8</sup> Admittedly, a portion of the property covered by the Extension Notice is contiguous only at a corner  
point, making it unclear whether it is actually "contiguous." However, as explained above, the entire area  
is located within Pinal County, where the Utilities' have lawfully commenced operations and therefore,  
service can be extended and plant constructed under the "within the same city, town or county" provision  
of A.R.S. § 40-281.B.

1 included in the Extension Application, is not "contiguous" and therefore was not included in the  
2 Extension Notice.

3 Staff, however, advances an overly narrow reading of the term "contiguous" that would  
4 substantially limit extensions of service under this portion of the applicable statute. Specifically,  
5 Staff has articulated its position as follows:

6 Arizona law allows water companies to extend service to  
7 "contiguous" parcels without applying for a CC&N extension.  
8 However, in order to be "contiguous", a parcel must touch the  
9 service area originally outlined in the water company's original  
CC&N. Parcels that are not touching the original certificated area  
are not considered contiguous.

10 Letter dated April 24, 2003, copy attached hereto at Exhibit 3. Unfortunately, Staff's position  
11 suffers from undue reliance on the term "parcel," which is not defined by Staff or in the  
12 Commission's rules. For example, is Section 24, which is clearly contiguous to the Utilities'  
13 CC&Ns, a "parcel"? Or, does Staff believe that a "parcel" refers only to an arbitrary band of  
14 land at the upper edge of Section 24? The Utilities respectfully submit that Staff's position is  
15 simply not clear, and, in any event, Staff's attempt to use the term "parcel" to restrict the  
16 Utilities' rights under A.R.S. § 40-281.B is entirely unsupported by Arizona law.

17 In contrast, the position advanced by the Utilities in the Extension Notice, and again in  
18 response to Staff's demand that the Utilities' cease exercising their statutory rights under A.R.S.  
19 § 40-281.B (*see* Exhibit 3), again in response to multiple data requests from Staff in this docket  
20 and now, most recently, in this response, is in accord with the broad interpretation of the statute  
21 by the Arizona Supreme Court in *Electrical District No. 2*. A.R.S. § 40-281.B allows for the  
22 orderly growth of a certificated area, albeit without the rights of exclusivity that accompany an  
23 order of the Commission extending a CC&N, without unnecessary and repetitious administrative  
24 proceedings. 155 Ariz. at 256, 745 P.2d at 1387. The Utilities, despite the Staff witnesses' view  
25 to the contrary, have proceeded in good faith consistent with this interpretation of A.R.S. § 40-  
26 281.B.

## **The Extension Application**

This section of the Staff Report contains several significant factual errors regarding the projects to be served. The Extension Application does not propose the extension of water and sewer utility service to a single residential development known as Rancho Sierra south of the Ak-Chin Indian Reservation. *See* Staff Report at 4. That development is not even covered by the Extension Application. Rather, the Extension Application covers several master planned residential developments (and no golf courses), located south of the Gila River Indian Reservation. *See* Extension Application at ¶¶ 2, 4, 10 and at Exhibit 3.

## **Requests for Service**

The Utilities agree with this section of the Staff Report. However, subsequent to the filing of the Extension Application, one developer, KB Homes Phoenix, Inc. (*see* Staff Report at 5), has withdrawn its request for service. Accordingly, the Utilities ask that this property be deleted from the requested CC&N extensions. An amended legal description and map with the KB Homes' property deleted is attached hereto at Exhibit 4.

In addition, the Staff Report makes no mention of the service requests by the two separate Intervenor. Nor have the Intervenor made any filings supporting their requests for extensions of water and wastewater utility service. Consequently, while the Utilities are willing to extend service on appropriate terms and conditions, they are unable to address the Intervenor's service requests in any further detail at this time.

## **Financing of Utility Facilities**

The Utilities agree with this section of the Staff Report except point out that under the applicable main extension agreements, developers will convey on-site water as well as wastewater infrastructure. *See* Staff Report at 5.

## **Water Infrastructure**

The Utilities agree with this section of the Staff Report except to note, as the information provided to Staff shows, that Santa Cruz' actual existing water storage capacity is actually 3

1 million gallons, not 1.5 million gallons as stated in the Staff Report. *Id.*

## 2 **Curtailment Plan Tariff**

3 Although there is nothing to suggest that Santa Cruz faces water supply limitations, the  
4 Utilities agree with this section of the Staff Report and a proposed form of Curtailment Plan is  
5 attached hereto at Exhibit 5.

## 6 **Arizona Department of Water Resources Compliance**

7 The Utilities agree with the conclusion in this section of the Staff Report that Santa Cruz  
8 is in total compliance with applicable reporting and conservation requirements. *See* Staff Report  
9 at 7.

## 10 **Wastewater Infrastructure**

11 The Utilities generally agree with this section of the Staff Report, but would add that that  
12 effluent disposal will be accomplished by landscape irrigation, in addition to those other means  
13 identified in the Staff Report. *Id.*

## 14 **Authorized Rates**

15 The Utilities agree that Palo Verde should provide service to the extension area under its  
16 currently authorized rates and tariffs. Although not mentioned by the Staff witnesses in this  
17 section of the report, the Utilities also recommend that Santa Cruz should also provide service  
18 under its currently authorized rates and tariffs. *See* Staff Report at 8.

## 19 **ACC Compliance**

20 The Utilities agree with the conclusion in this section of the Staff Report. *Id.* at 9.

## 21 **Recommendations**

### 22 **Water Service CC&N Transfer**

23 As discussed above (section **Notice of Asset Transfer**, *supra*), the Utilities do not  
24 believe that approval of an asset transfer between the former corporations and the utilities in their  
25 current limited liability form is legally necessary, as such assets were transferred from the  
26 corporations to the LLCs by operation of law, without any impact on ownership, control or

1 operations. In fact, the Utilities urge the Commission to refrain from establishing such a  
2 precedent in these dockets because it will inevitably result in the inefficient use of limited  
3 administrative and utility resources in the future as other public service corporations seek to  
4 realize the benefits of making similar changes in organizational structure.

5 Nevertheless, in the event the Commission agrees with Staff, and concludes that approval  
6 of asset transfers is necessary, the Utilities urge the Commission to reject Staff's second  
7 recommendation in this section, that notice of the transfer be provided to all customers, regulatory  
8 bodies and interested parties. *See* Staff Report at 9. Such notice, in addition to resulting in an  
9 unnecessary expense, is likely to cause undue confusion given that the Utilities have been  
10 operating for over two years as LLCs without ever experiencing any material change in  
11 ownership, control or operations.

#### 12 **Wastewater CC&N Transfer**

13 The Utilities' response to Staff's recommendations in this section is identical to the  
14 response to Staff's recommendations concerning **Water Service CC&N Transfer**, *supra*.

#### 15 **Water Service CC&N Extension**

16 The Utilities generally agree to Staff's recommended conditions 1, 2, 3 and 4 in this  
17 section of the Staff Report, subject to further clarification as provided herein. The Utilities  
18 oppose Staff's recommended condition 5, but only to the extent it incorporates Staff's  
19 recommendations concerning approval of asset transfers for the reasons stated previously in this  
20 response.

21 Regarding condition No. 3 (Certificate of Assured Water Supply), because Santa Cruz has  
22 an Assured Water Supply Designation issued by ADWR, developers will not be required to  
23 obtain their own certificates. Instead, Santa Cruz has applied for a modification of its designation  
24 and, now that a favorable Staff Report has been issued, expects to receive notice that its  
25 designation has been modified to include the property subject to the Extension Application. *See*  
26 ADWR letter dated April 29, 2003, copy attached hereto at Exhibit 6. The Utilities will also



1 provide a copy of the actual modification of Santa Cruz' designation as soon as it is available.

2       Regarding condition No. 4 (Franchise), Santa Cruz operates in an unincorporated portion  
3 of Pinal County and therefore cannot obtain a "municipal" franchise as recommended by Staff.  
4 However, Santa Cruz has applied for an extension of its Pinal County Franchise. *See* Franchise  
5 Application, copy attached hereto at Exhibit 7. Santa Cruz will provide a copy of its extended  
6 Franchise as soon as it is available.

7       **Waste Water Service CC&N Extension**

8       The Utilities agree to Staff's recommended condition 1 in this section of the Staff Report.  
9 The Utilities further agree to Staff's recommended condition 3, subject to the same clarification  
10 explained hereinabove concerning an extension of the Pinal County Franchise for Santa Cruz.  
11 The Utilities oppose Staff's recommended condition 4, but only to the extent it incorporates  
12 Staff's recommendations concerning approval of asset transfers for the reasons stated previously  
13 in this response.

14       The Utilities oppose condition 2 (CAAG 208 Plan Amendment) as set forth in the Staff  
15 recommendations in this section of the Staff Report. An amendment to the CAAG 208 Plan is  
16 not required in order for the Commission to extend Palo Verde's CC&N.<sup>9</sup> The existing CAAG  
17 208 Plan contemplates an extension of service by Palo Verde within a three mile radius of its  
18 existing CC&N, a substantially larger area than Palo Verde's CC&N encompassing all of the area  
19 subject to the Extension Request. *See* excerpts from CAAG 208 Water Quality Plan Amendment  
20 for Palo Verde Utilities Company attached hereto at Exhibit 8, at 3. *See also* Map at Exhibit 9.

21       Moreover, Palo Verde already has sufficient authority under the CAAG Plan to provide  
22 wastewater treatment far in excess of its current demands. Specifically, under the existing CAAG  
23 208 Plan, Palo Verde has an authorized maximum capacity of 2.25 million gallons per day. *Id.*

24 \_\_\_\_\_  
25 <sup>9</sup> Staff correctly points out that Palo Verde is in the process of obtaining an amendment to the existing  
26 CAAG 208 Plan. Staff Report at 8. The primary purpose of that requested plan amendment is to increase  
treatment capacity from 2.25 million gallons per day to a maximum capacity of 9 million gallons per day.  
*See* Staff Report at 8.

1 Even assuming a conservative 200 gallons per day of treatment capacity per household, under  
2 existing CAAG authority, Palo Verde can provide treatment service to 11,250 homes.

3 Thus, there does not appear to be any reason to condition an extension of Palo Verde's  
4 CC&N on an amendment to the existing CAAG 208 Plan. Even assuming the Commission  
5 wished to condition the extension of Palo Verde's CC&N on a CAAG amendment, the condition  
6 should be that Palo Verde is limited to providing treatment services up to the level of existing  
7 CAAG authority, i.e., in its existing CC&N plus a three mile radius and up to 2.25 million gallons  
8 per day (approximately 11,250 households), until such time as it obtains a further amendment to  
9 the CAAG 208 Plan.

10 DATED this 14<sup>th</sup> day of July 2003.

11 FENNEMORE CRAIG, P.C.

12  
13 By: 

Jay L. Shapiro

Patrick J. Black

Attorney for Palo Verde Utilities Company and  
Santa Cruz Water Company

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15  
16 ORIGINAL and 15 copies of the  
17 foregoing delivered this 14th  
day of July, 2003, to:

18 Docket Control  
19 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

20 COPY hand-delivered this  
21 14<sup>th</sup> day of July, 2003 to:

22 Dwight D. Nodes  
23 Assistant Chief Administrative Law Judge  
Hearing Division  
24 Arizona Corporation Commission  
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Phoenix, Arizona 85007

25 David Ronald  
26 Staff Counsel  
Legal Division

1 Arizona Corporation Commission  
2 1200 West Washington Street  
3 Phoenix, Arizona 85007

4 COPY mailed this  
5 14<sup>th</sup> day of July, 2003 to:

6 Brent D. Butcher  
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10 3799 E. Catamount Ridge Way  
11 Sandy, UT 84092

12 By: \_\_\_\_\_

13 1438099.2

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**COMMISSIONERS**  
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BRIAN C. MCNEIL  
Executive Secretary

**ARIZONA CORPORATION COMMISSION**

May 16, 2003

JAY SHAPIRO

MAY 17 2003

ACTION \_\_\_\_\_

Jay L. Shapiro, Esq.  
FENNEMORE CRAIG  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913

**RE: Palo Verde Utilities Company and Santa Cruz Water Company**  
**Docket No.'s: SW-03575A-98-0327 and W-03576A-98-0328**

Dear Mr. Shapiro:

Staff received your April 30, 2003 letter regarding your clients' interpretation of A.R.S. § 40-281(B). In addition, Staff met with you and your client on May 8, 2003, to discuss Staff's interpretation of the above statute.

In this case, your clients have chosen to argue that two of the three provisions for an extension outlined in A.R.S. § 40-281(B) are applicable to your case. One provision does not require a certificate for an "extension into territory either within or without a city, county or town, contiguous to its street railroad, or line, plant or system, and not served by a public service corporation of like character".

The Arizona Supreme Court has held that two locations are "contiguous" when they are "in actual contact or touching." *Electrical District No. 2 v. Arizona Corp. Comm'n*, 155 Ariz. 252, 257, 745 P.2d 1383, 1388 (1987) (citing *Ehle v. Tenney Trading Co.*, 56 Ariz. 241, 245, 107 P.2d 210, 212 (1940)). Arizona law allows water companies to extend service to "contiguous" parcels without applying for a CC&N extension. However, in order to be "contiguous", a parcel must touch the service area outlined in a water company's original CC&N. Parcels that are not touching the original certificated area are not considered "contiguous".

The other provision of A.R.S. § 40-281(B) does not require a certificate for an "extension within a city, county or town within which it has lawfully commenced operations". In Staff's view, the language of the CC&N is the defining factor when applying this provision. For example, if the language of the certificate says a company may serve in Phoenix, that company may extend service anywhere in Phoenix without applying for an extension. This service extension would even apply to non-contiguous parcels (as long as they were located in Phoenix). On the other hand, if the language of the certificate includes a specific legal description (that happens to be in Phoenix), that company may not extend service to non-contiguous parcels outside its legal description (even if these parcels are located in Phoenix). The above example also applies to extensions within counties or towns. Under your client's view of the statute, this exception would swallow the rule of requiring an extension. Very few water CC&N's are for more than one County and requiring an extension only when a different County is entered is an unreasonable interoperation of the statute.

Page 2

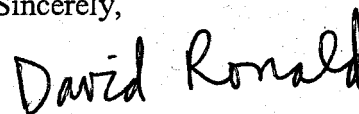
Jay L. Shapiro

May 16, 2003

Docket No.'s: SW-03575A-98-0327 and W-03576A-98-0328.

Your clients may not serve non-contiguous parcels that are outside of the legal descriptions described in your certificates. In addition, in Staff's opinion, "contiguous" parcels must be touching. Staff is aware that your clients have applied for an extension of their existing certificates. At the meeting on May 8, 2003, Staff was pleased with your client's willingness to work with Staff to resolve these matters through the pending application process. Please advise me if your client decides to attempt on implementation of its view of the statute by serving parcels that are not touching its current CC&N boundaries. I would hope that the timely processing of this application will avoid an unnecessary confrontation.

Sincerely,

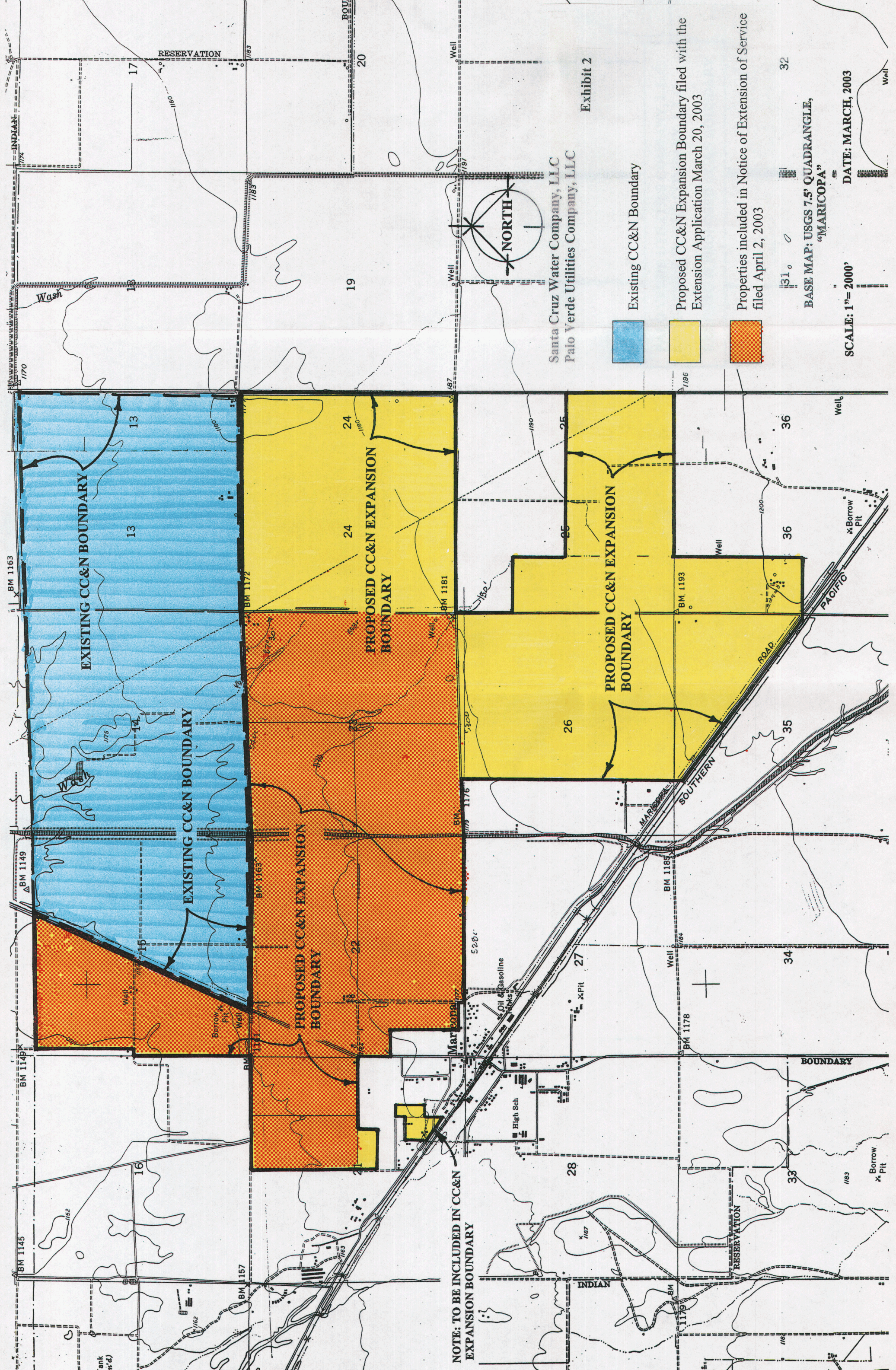
A handwritten signature in dark ink that reads "David Ronald". The signature is written in a cursive, slightly slanted style.

David Ronald  
Legal Division  
(602) 542-3402

DR:alb

cc: Lyn Farmer  
Docket Control





EXISTING CC&N BOUNDARY

EXISTING CC&N BOUNDARY

PROPOSED CC&N EXPANSION BOUNDARY

PROPOSED CC&N EXPANSION BOUNDARY

PROPOSED CC&N EXPANSION BOUNDARY

Santa Cruz Water Company, LLC  
Palo Verde Utilities Company, LLC

Exhibit 2

- Existing CC&N Boundary
- Proposed CC&N Expansion Boundary filed with the Extension Application March 20, 2003
- Properties included in Notice of Extension of Service filed April 2, 2003

BASE MAP: USGS 7.5' QUADRANGLE, "MARICOPA"

SCALE: 1"=2000'

DATE: MARCH, 2003

NOTE: TO BE INCLUDED IN CC&N EXPANSION BOUNDARY



**COMMISSIONERS**  
MARC SPITZER - Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON



BRIAN C. MCNEIL  
Executive Secretary

**ARIZONA CORPORATION COMMISSION**

April 24, 2003

**JAY SHAPIRO**

**APR 26 2003**

**ACTION** \_\_\_\_\_

Jay L. Shapiro, Esq.  
FENNEMORE CRAIG  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913

**RE: Palo Verde Utilities Company and Santa Cruz Water Company**  
**Docket No.'s: SW-03575A-98-0327 and W-03576A-98-0328**

Dear Mr. Shapiro:

On April 2<sup>nd</sup>, 2003, Staff received a copy of your Notice of Extension of Service to Contiguous Property Lying Outside Certificates of Convenience and Necessity. On April 15<sup>th</sup>, 2003, Staff received a copy of your (Amended) Notice of Extension of Service to Contiguous Property Lying Outside Certificates of Convenience and Necessity. Staff is aware that applicants Santa Cruz Water Company, L.L.C. ("Santa Cruz") and Palo Verde Utilities Company, L.L.C. ("Palo Verde") have filed for an extension of their existing CC&N. This letter is to inform you that, in Staff's Opinion, Applicant's Notices are not in accord with Arizona law.

Under A.R.S. § 40-281(B), Santa Cruz and Palo Verde do not need a certificate "For an extension into territory either within or without a city, county or town, 'contiguous' to its . . . line, plant or system, and not served by a public service corporation of like character". The Arizona Supreme Court has held that two locations are "contiguous" when they are "in actual contact or touching." *Electrical District No. 2 v. Arizona Corp. Comm'n*, 155 Ariz. 252, 257, 745 P.2d 1383, 1388 (1987) (citing *Ehle v. Tenney Trading Co.*, 56 Ariz. 241, 245, 107 P.2d 210, 212 (1940)).

Arizona law allows water companies to extend service to "contiguous" parcels without applying for a CC&N extension. However, in order to be "contiguous", a parcel must touch the service area outlined in a water company's original CC&N. Parcels that are not touching the original certificated area are not considered "contiguous".

The language in Santa Cruz and Palo Verde's "Exhibit A" suggests that Santa Cruz and Palo Verde are serving parcels that are not "contiguous". Specifically, the language "All of Section 23" and "Contains 1610 acres, more or less" indicates that Santa Cruz and Palo Verde are serving multiple parcels. Santa Cruz and Palo Verde may not provide service to any non-

Page 2  
Jay L. Shapiro  
Docket No.'s: SW-03575A-98-0327  
and W-03576A-98-0328.

contiguous parcels until they have applied for and been granted a CC&N extension.

Santa Cruz and Palo Verde may begin serving contiguous parcels immediately. However, Staff respectfully requests that Santa Cruz and Palo Verde cease and desist from providing service to any non-contiguous parcels until their request for a CC&N extension has been granted.

Sincerely,

*David Ronald*

David Ronald  
Legal Division  
(602) 542-3402

DR:alb

cc: Lyn Farmer  
Docket Control



**LEGAL DESCRIPTION FOR CC&N EXPANSION FOR  
PALO VERDE UTILITIES COMPANY, L.L.C. AND  
SANTA CRUZ WATER COMPANY, L.L.C.**

THAT PORTION OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 3 EAST, GILA & SALT RIVER BASE & MERIDIAN, PINAL COUNTY, ARIZONA, LYING WESTERLY OF THE WESTERLY RIGHT-OF-WAY OF ARIZONA STATE ROUTE 347, EXCEPT THE WEST 160 FEET OF THE NORTHWEST QUARTER THEREOF;

TOGETHER WITH THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST;

TOGETHER WITH ALL OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE WESTERLY 500 FEET OF THE SOUTHERLY 1803 FEET OF THE SOUTHWEST QUARTER THEREOF, AND EXCEPT THE SOUTHERLY 173 FEET OF THE SOUTHWEST QUARTER THEREOF;

TOGETHER WITH ALL OF SECTIONS 23 AND 24, TOWNSHIP 4 SOUTH, RANGE 3 EAST;

TOGETHER WITH ALL OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE EAST ONE-HALF THEREOF, AND EXCEPT THE NORTH HALF OF THE NORTHWEST QUARTER THEREOF; AND EXCEPT THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER THEREOF; AND EXCEPT THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER THEREOF;

TOGETHER WITH THE NORTH 3000 FEET, MORE OR LESS, OF THE WEST HALF OF THE WEST HALF OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 3 EAST LYING NORTHERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY;

TOGETHER WITH THAT PORTION OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST, LYING NORTHEASTERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY, EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST LYING NORTHEASTERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY;

TOGETHER WITH ALL OF SECTION 26, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE WEST HALF OF THE WEST HALF THEREOF;

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA; THENCE EASTERLY 30.0 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTHERLY 525.0 FEET, THENCE EASTERLY 600.0 FEET, THENCE NORTHERLY 525.5 FEET, THENCE WESTERLY 600.0 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA; THENCE EASTERLY 690.0 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTHERLY 525.6 FEET, THENCE EASTERLY 400.0 FEET, THENCE NORTHERLY 525.9 FEET, THENCE WESTERLY 400.0 FEET TO THE TRUE POINT OF BEGINNING.

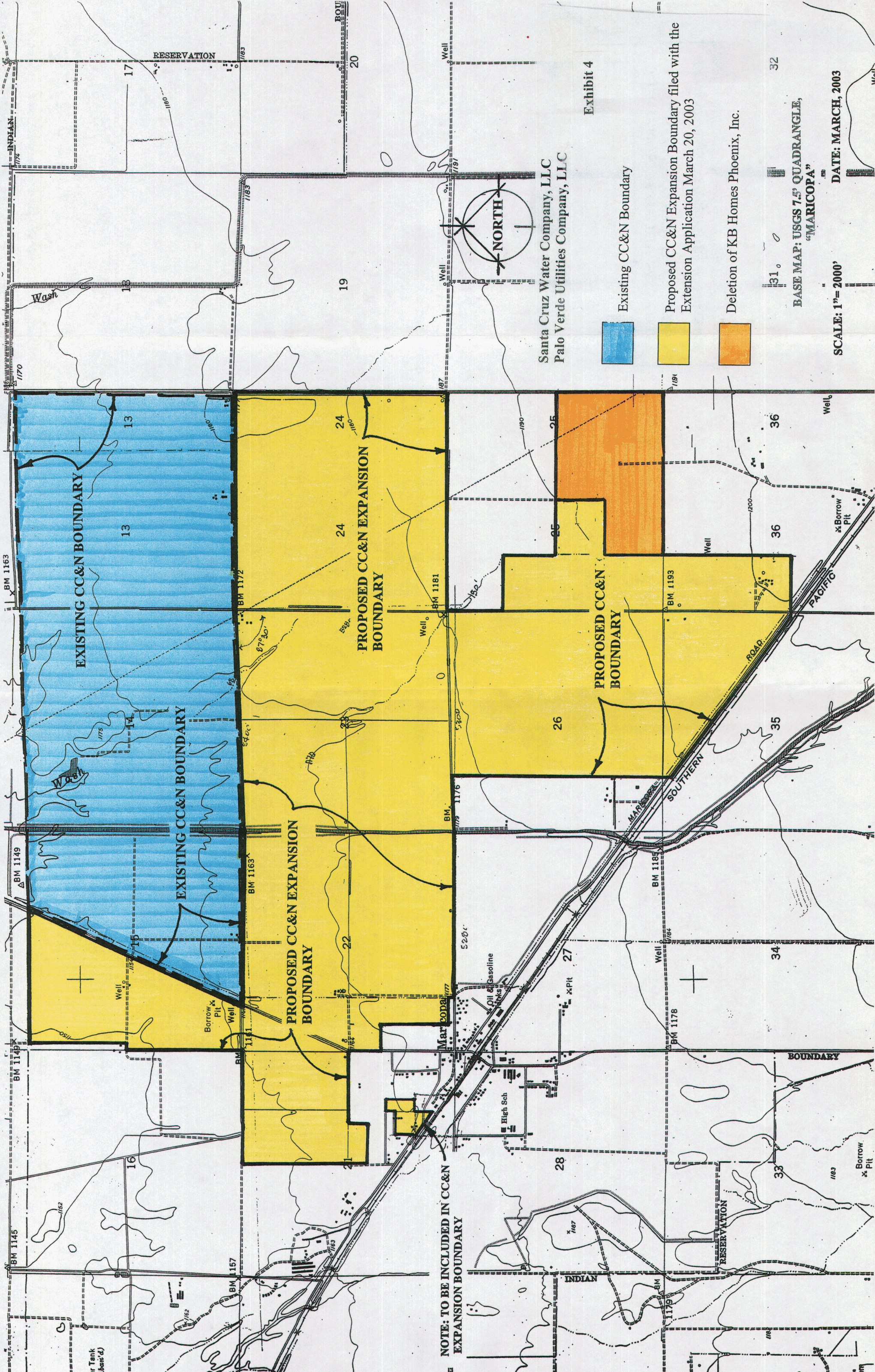
TOGETHER WITH THE FOLLOWING: COMMENCING AT A POINT ON THE WEST SIDE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, 810 FEET NORTH OF THE SECTION LINE COMMON TO THE SOUTH OF SAID SECTION 21 AND EXTENDING NORTH ALONG SAID QUARTER SECTION LINE FOR A DISTANCE OF 726 FEET: THENCE 300 FEET EAST; THENCE SOUTH 726 FEET PARALLELING SAID QUARTER SECTION LINE; THENCE WEST TO THE POINT OF BEGINNING;

TOGETHER WITH ALL THAT PART OF THE EAST 495.5 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, LYING NORTH OF THE NORTH BOUNDARY LINE OF THE COUNTY ROAD WHICH IS NORTH OF THE SOUTHERN-PACIFIC RAILROAD RIGHT-OF-WAY.

TOGETHER WITH THOSE PARTICULAR PUBLIC STREETS AND/OR COUNTY ROADWAYS UTILIZED BY THE PUBLIC FOR LEGAL ACCESS TO ANY AND/OR ALL OF THE LANDS DESCRIBED ABOVE.

CONTAINS 3,226 ACRES, MORE OR LESS.





NOTE: TO BE INCLUDED IN CC&N  
EXPANSION BOUNDARY

Santa Cruz Water Company, LLC  
Palo Verde Utilities Company, LLC

Exhibit 4

- Existing CC&N Boundary
- Proposed CC&N Expansion Boundary filed with the  
Extension Application March 20, 2003
- Deletion of KB Homes Phoenix, Inc.

BASE MAP: USGS 7.5' QUADRANGLE,  
"MARICOPA"

SCALE: 1"= 2000'

DATE: MARCH, 2003



## TARIFF SCHEDULE

Utility: Santa Cruz Water Company, LLC  
No.: 1 of 4  
Docket No. W-03576A-03-0167  
Phone No.: 602-914-2100

Tariff Sheet \_\_\_\_\_  
Decision No.: \_\_\_\_\_  
Effective: \_\_\_\_\_

### CURTAILMENT PLAN FOR:

ADEQ Public Water System Number: 11-131

**Santa Cruz Water Company, LLC** ("Company"), is authorized to curtail water service to all customers within its certificated area under the terms and conditions listed in this tariff.

This curtailment plan shall become part of the Arizona Department of Environmental Quality Emergency Operations Plan for the Company.

The Company shall notify its customers of this new tariff as part of its next regularly scheduled billing after the effective date of the tariff or no later than sixty (60) days after the effective date of the tariff.

The Company shall provide a copy of the curtailment tariff to any customer, upon request.

#### **Stage 1 Exists When:**

Company is able to maintain water storage in the system at 100 percent of capacity and there are no known problems with its well production or water storage in the system.

Restrictions: Under Stage 1, Company is deemed to be operating normally and no curtailment is necessary.

Notice Requirements: Under Stage 1, no notice is necessary.

#### **Stage 2 Exists When:**

- a. Company's water storage or well production has been less than 80 percent of capacity for at least 48 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

Restrictions: Under Stage 2, the Company may request the customers to voluntarily employ water conservation measures to reduce water consumption by approximately 25 percent of Stage 1 consumption. Outside watering should be limited to essential water, dividing outside watering on some uniform basis (such as even and odd days) and eliminating outside watering on weekends and holidays.

## TARIFF SCHEDULE

Utility: Santa Cruz Water Company, LLC

Tariff Sheet \_\_\_\_\_

No.: 2 of 4

Docket No. W-03576A-03-0167

Decision No.: \_\_\_\_\_

Phone No.: 602-914-2100

Effective: \_\_\_\_\_

Notice Requirements: Under Stage 2, the Company is required to notify customers by delivering written notice door to door at each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such notice shall notify the customers of the general nature of the problem and the need to conserve water.

### **Stage 3 Exists When:**

- a. Company's total water storage or well production has been less than 50 percent of capacity for at least 24 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

Restrictions: Under Stage 3, Company shall request the customers to voluntarily employ water conservation measures to reduce daily consumption by approximately 50 percent of Stage 1 consumption. All outside watering should be eliminated, except livestock, and indoor water conservation techniques should be employed whenever possible.

### Notice Requirements:

1. Company is required to notify customers by delivering written notice to each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such Notice shall notify the customers of the general nature of the problem and the need to conserve water.
2. Beginning with Stage 3, Company shall post at least 12 signs showing the curtailment stage. Signs shall be posted at noticeable locations, like at the well sites and at the entrance to major subdivisions served by the Company.
3. Company shall notify the Consumer Services Section of the Utilities Division of the Corporation Commission at least 12 hours prior to entering stage 3.

### **Stage 4 Exists When:**

- a. Company's total water storage or well production has been less than 25 percent of capacity for at least 12 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

## TARIFF SCHEDULE

Utility: Santa Cruz Water Company, LLC

No.: 3 of 4

Docket No. W-03576A-03-0167

Phone No.: 602-914-2100

Tariff Sheet \_\_\_\_\_

Decision No.: \_\_\_\_\_

Effective: \_\_\_\_\_

**Restrictions:** Under Stage 4, Company shall inform the customers of a **mandatory** restriction to employ water conservation measures to reduce daily consumption. Failure to comply will result in customer disconnection. The following uses of water shall be prohibited:

- ◆ Irrigation of outdoor lawns, trees, shrubs, or any plant life is prohibited
- ◆ Washing of any vehicle is prohibited
- ◆ The use of water for dust control or any outdoor cleaning uses is prohibited
- ◆ The use of drip or misting systems of any kind is prohibited
- ◆ The filling of any swimming pool, spas, fountains or ornamental pools is prohibited
- ◆ Restaurant patrons shall be served water only upon request
- ◆ Any other water intensive activity is prohibited

**Notice Requirements:**

1. Company is required to notify customers by delivering written notice to each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such notice shall notify the customers of the general nature of the problem and the need to conserve water.
2. Company shall post at least 12 signs showing curtailment stage. Signs shall be posted at noticeable locations, like at the well sites and at the entrance to major subdivisions served by the Company.
3. Company shall notify the Consumer Services Section of the Utilities Division of the Corporation Commission at least 12 hours prior to entering stage 4.

Customers who fail to comply with the above restrictions will be given a written notice to end all outdoor use. Failure to comply within two (2) working days of receipt of the notice will result in temporary loss of service until an agreement can be made to end unauthorized use of outdoor water. To restore service, the customer shall be required to pay all authorized reconnection fees. If a customer believes he/she has been disconnected in error, the customer may contact the Commission's Consumer Services Section at 1-800-222-7000 to initiate an investigation.

Once Stage 4 has been reached, the Company must augment the supply of water by hauling or through an emergency interconnect from an approved supply or must otherwise provide emergency drinking water for its customers until a permanent solution has been implemented.

**ARIZONA DEPARTMENT OF WATER RESOURCES**

**Office of Assured and Adequate Water Supply**

500 North Third Street, Phoenix, Arizona 85004

Telephone 602 417-2465

Fax 602 417-2467



**JANET NAPOLITANO**  
Governor

**HERB GUENTHER**  
Director

April 29, 2003

Richard T. Campbell  
Withey Anderson & Morris P.L.C.  
2525 E. Arizona Biltmore Circle  
Suite A-212  
Phoenix AZ 85016

**Re: Application for a Modification of a Designation of Assured Water Supply  
Santa Cruz Water Company (DWR No. 27-400804)  
Administrative Completeness Review**


Dear Mr. Campbell:

This is in response to your request of April 25, 2003, for a letter from the Office of Assured Water Supply regarding the status of the hydrology requirement for the above referenced application. The Department's Hydrology Division has approved the application. However, as you were informed during our meeting of April 17, there are other items missing from the application that make it incomplete:

- > A favorable staff report by the Arizona Corporation Commission (ACC) recommending approval of Santa Cruz Water Company's extension of their Certificate of Convenience and Necessity. When the report is submitted to the Department, it will qualify this application as complete, allowing it to proceed to public notice. Please note that a copy of the final decision rendered by the ACC is necessary before this application will be considered substantively correct (R12-15-703.D.10.).
- > Certificates of Extinguishment of Grandfathered Groundwater Rights 58-102952.0001 and 58-102952.0006.

Please submit the requested items to the Office of Assured Water Supply within 60 days, or the Director may take action to deny the application and close the file. Departmental review of your application will not resume until the requested information is received. If you have any questions regarding this letter or any other part of the application process, please do not hesitate to contact me at (602) 417-2465.

Sincerely,

  
Kay McNeely  
Water Resource Specialist

**BEFORE THE BOARD OF SUPERVISORS**

**OF**

**COUNTY OF PINAL, STATE OF ARIZONA**

IN THE MATTER OF THE APPLICATION )  
OF **SANTA CRUZ WATER COMPANY, LLC** )  
TO OBTAIN AN EXPANSION OF CURRENT )  
**WATER UTILITY FRANCHISE** )

JOINT APPLICATION FOR  
EXPANSION OF PUBLIC  
UTILITY FRANCHISE

IN THE MATTER OF THE APPLICATION )  
OF **PALO VERDE UTILITIES COMPANY, LLC** )  
TO OBTAIN AN EXPANSION OF CURRENT )  
**WASTEWATER UTILITY FRANCHISE** )

TO THE HONORABLE BOARD OF SUPERVISORS:

COMES NOW the above-named applicants and petitions the PINAL COUNTY BOARD OF SUPERVISORS AS FOLLOWS:

**I.**

That petitioners, SANTA CRUZ WATER COMPANY, LLC (Santa Cruz) and PALO VERDE UTILITIES COMPANY, LLC (Palo Verde), both Arizona limited liability companies and both Arizona public service corporations, with their principal place of business in the County of Pinal, State of Arizona. The current mailing address of Santa Cruz and Palo Verde is 426 N. 44<sup>th</sup> Street, Suite 200, Phoenix, AZ 85008.

**II.**

That Santa Cruz and Palo Verde, doing business in Pinal County, Arizona, hereby petitions your body for a expansion of their current Utility Franchise to maintain and operate a water system, including transmission lines and all appurtenances, and to maintain and operate a wastewater collection system,



including effluent transmission lines and all appurtenances, to serve in portions of Pinal County. The full legal description is attached hereto as Exhibit I.

**III.**

That your petitioners have made applications to the Arizona Corporation Commission for an expansion of their current Certificate of Convenience and Necessity to exercise the functions of a public utility to provide water and wastewater services to persons living within this said territory as shown on Exhibit 2, subject to the laws of the State of Arizona.

**IV.**

That your petitioners, if granted the expansion of their current Utility Franchise, purposes to engage in and carry on the business of a water and wastewater company.

**V.**

That your petitioners are financially able to undertake installation of said services and provide water and wastewater services within said territory for which this franchise is requested.

**VI.**

That the Board of Supervisors may impose such restrictions and limitations upon the public roads as it deems best for the public safety and welfare.

**VII.**

That the petitioners submit herewith the required \$200.00 filing fee with this application.

**VII.**

That by the fact already stated herein and because of the fact that no adequate and safe supply of water and no adequate system of wastewater collection, treatment and disposal are now available to persons now living, or who may live, within the said territory hereinbefore described, and because of the

further fact that water and wastewater service promptly supplied to waiting customers and prospective applicants will do much to develop and improve the area described, and to increase the population of the communities within which services are supplied, your petitioners respectfully petitions your Honorable Boards of Supervisors to grant this Application for a expansion to the current franchise from the County of Pinal, State of Arizona, to construct, maintain and operate their pipeline and appurtenances for a water and wastewater system in, over, across and upon the existing County owned and future Rights-of-Way for a period of twenty-five (25) years.

IX.

That public Notice be given in a newspaper of general circulation publication within the County of Pinal, as may be required by law, prior to the date set for the consideration by the Board of Supervisors or its intension to grant said Utility Franchise expansion application.

X.

All correspondence regarding this application should be addressed to:

Cindy Liles, VP and Chief Financial Officer  
Santa Cruz Water Company  
Palo Verde Utilities Company  
426 N. 44<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85008

Dated this 30<sup>th</sup> day of June, 2003

Santa Cruz Water Company, LLC

By: Cindy Liles  
Cindy Liles  
VP and Chief Financial Officer

Palo Verde Utilities Company, LLC

By: Cindy Liles  
Cindy Liles  
VP and Chief Financial Officer

**Exhibit 1**

**LEGAL DESCRIPTION FOR UTILITY FRANCHISE EXPANSION FOR  
SANTA CRUZ WATER COMPANY, L.L.C. AND  
PALO VERDE UTILITIES COMPANY, L.L.C.**

THAT PORTION OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 3 EAST, GILA & SALT RIVER BASE & MERIDIAN, PINAL COUNTY, ARIZONA, LYING WESTERLY OF THE WESTERLY RIGHT-OF-WAY OF ARIZONA STATE ROUTE 347, EXCEPT THE WEST 160 FEET OF THE NORTHWEST QUARTER THEREOF;

TOGETHER WITH THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST;

TOGETHER WITH ALL OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE WESTERLY 500 FEET OF THE SOUTHERLY 1803 FEET OF THE SOUTHWEST QUARTER THEREOF, AND EXCEPT THE SOUTHERLY 173 FEET OF THE SOUTHWEST QUARTER THEREOF;

TOGETHER WITH ALL OF SECTIONS 23 AND 24, TOWNSHIP 4 SOUTH, RANGE 3 EAST;

TOGETHER WITH ALL OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE EAST ONE HALF THEREOF, AND EXCEPT THE NORTH HALF OF THE NORTHWEST QUARTER THEREOF; AND EXCEPT THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER THEREOF; AND EXCEPT THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER THEREOF;

TOGETHER WITH THE NORTH 3000 FEET, MORE OR LESS, OF THE WEST HALF OF THE WEST HALF OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 3 EAST LYING NORTHERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY;

TOGETHER WITH THAT PORTION OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST, LYING NORTHEASTERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY, EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST LYING NORTHEASTERLY OF THE SOUTHERN-PACIFIC RAILWAY RIGHT-OF-WAY;

TOGETHER WITH ALL OF SECTION 26, TOWNSHIP 4 SOUTH, RANGE 3 EAST, EXCEPT THE WEST HALF OF THE WEST HALF THEREOF;

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA; THENCE EASTERLY 30.0 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTHERLY 525.0 FEET, THENCE EASTERLY 600.0 FEET,

THENCE NORTHERLY 525.5 FEET, THENCE WESTERLY 600.0 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA; THENCE EASTERLY 690.0 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTHERLY 525.6 FEET, THENCE EASTERLY 400.0 FEET, THENCE NORTHERLY 525.9 FEET, THENCE WESTERLY 400.0 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING: COMMENCING AT A POINT ON THE WEST SIDE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, 810 FEET NORTH OF THE SECTION LINE COMMON TO THE SOUTH OF SAID SECTION 21 AND EXTENDING NORTH ALONG SAID QUARTER SECTION LINE FOR A DISTANCE OF 726 FEET: THENCE 300 FEET EAST; THENCE SOUTH 726 FEET PARALLELING SAID QUARTER SECTION LINE; THENCE WEST TO THE POINT OF BEGINNING;

TOGETHER WITH ALL THAT PART OF THE EAST 495.5 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, LYING NORTH OF THE NORTH BOUNDARY LINE OF THE COUNTY ROAD WHICH IS NORTH OF THE SOUTHERN-PACIFIC RAILROAD RIGHT-OF-WAY;

TOGETHER A PORTION OF THE NORTHWEST QUARTER OF SECTION 34 IN TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 34; THENCE NORTH 89° 24' 54" EAST, ALONG THE NORTH LINE OF SAID SECTION 34 A DISTANCE OF 798.87 FEET, TO THE POINT OF THE BEGINNING; THENCE CONTINUING NORTH 89° 24' 54" EAST, ALONG SAID NORTH LINE 1,852.18 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 34; THENCE SOUTH 00° 12' 02" WEST, ALONG THE NORTH SOUTH MID-SECTION LINE OF SAID SECTION 34 A DISTANCE OF 2,664.95 FEET TO THE CENTER OF SAID SECTION 34; THENCE NORTH 89° 51' 49" WEST, ALONG THE EAST WEST MID-SECTION LINE OF SAID SECTION 34 A DISTANCE OF 2,491.70 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF MARICOPA ROAD (STATE ROUTE 347); THENCE ALONG SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 00° 40' 29" WEST 1,468.58 FEET; THENCE NORTH 89° 19' 28" EAST 10.00 FEET; THENCE NORTH 00° 40' 32" WEST 454.76 FEET; THENCE LEAVING SAID RIGHT-OF-WAY NORTH 89° 24' 54" EAST 373.10 FEET TO A POINT MARKING THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 200.00 FEET; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46° 35' 45" AN ARC DISTANCE OF 162.65 FEET; THENCE NORTH 40° 10' 09" EAST 367.92 FEET TO A POINT MARKING THE BEGINNING OF A NON-TANGENT CURVE TO THE NORTH, THE CENTER

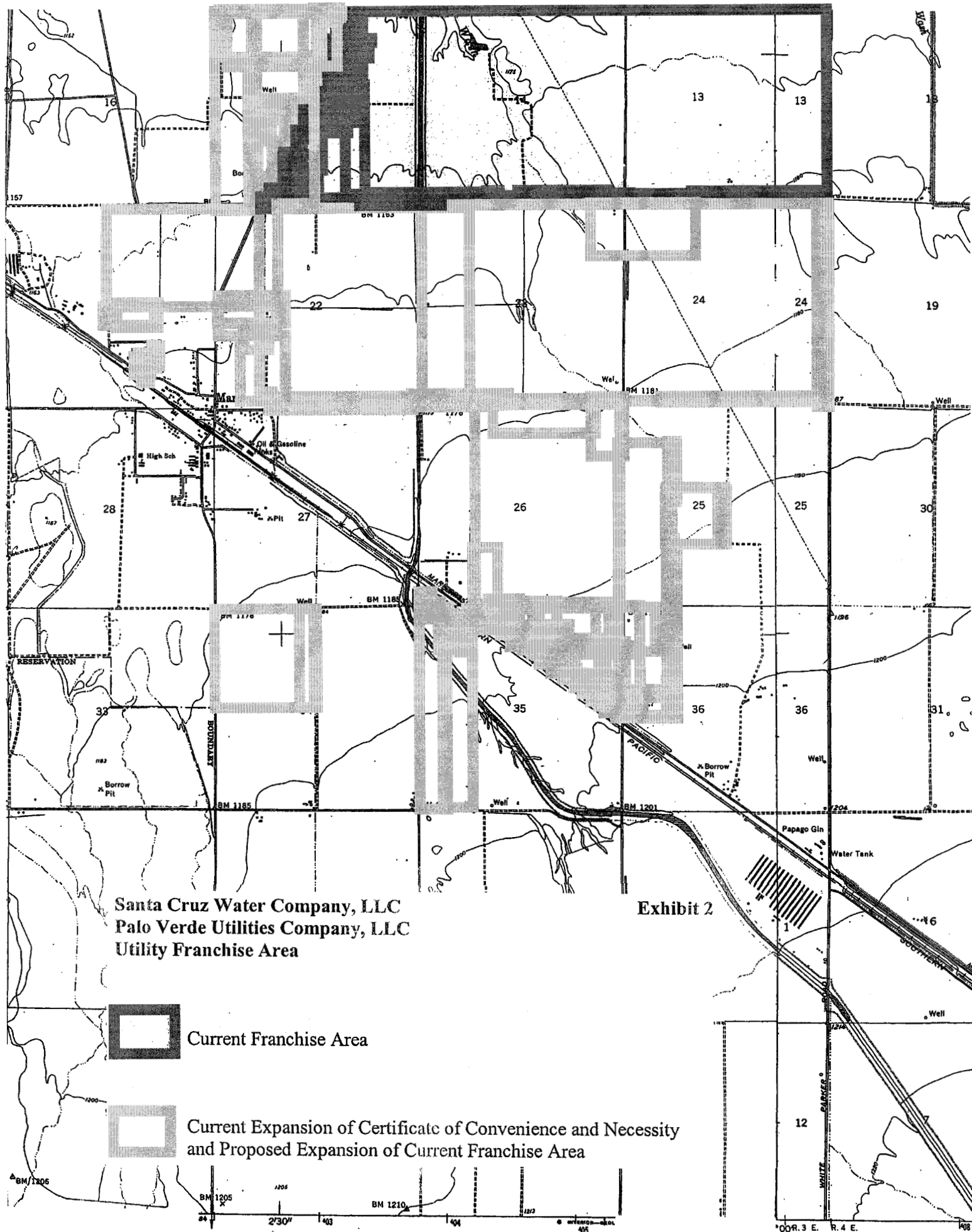
POINT OF WHICH BEARS NORTH 52° 38' 22" EAST 450.00 FEET THEREFROM; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36° 41' 06" AN ARC DISTANCE OF 288.12 FEET; THENCE NORTH 00° 40' 32" EAST 100.00 FEET TO THE POINT OF BEGINNING;

THE BASIS OF BEARING IS THE MONUMENT LINE OF MARICOPA ROAD, ALSO BEING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 3 EAST, USING A BEARING OF NORTH 00° 06' 23" WEST;

TOGETHER WITH THE BEGINNING AT THE SOUTHWEST CORNER OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, THENCE NORTH 00° 29' 40" WEST 5300 FEET, MORE OR LESS, ALONG THE WEST SECTION LINE OF SAID SECTION 35 TO THE NORTHWEST CORNER OF SAID SECTION 35, THENCE NORTH 89° 30' 20" EAST 750 FEET, MORE OF LESS, ALONG THE NORTH SECTION LINE OF SAID SECTION 35 TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN RAILROAD, THENCE SOUTH 53° 51' 30" EAST 1213 FEET ALONG SAID RIGHT-OF-WAY LINE, THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 0° 00' 00" EAST 1600 FEET, MORE OR LESS, TO THE SOUTH SECTION LINE OF SAID SECTION 35; THENCE NORTH 89° 43' 51" WEST 1684 FEET, MORE OR LESS, ALONG SAID SOUTH SECTION LINE TO THE POINT OF BEGINNING.

TOGETHER WITH THOSE PARTICULAR PUBLIC STREETS AND/OR COUNTY ROADWAYS UTILIZED BY THE PUBLIC FOR LEGAL ACCESS TO ANY AND/OR ALL OF THE LANDS DESCRIBED ABOVE.

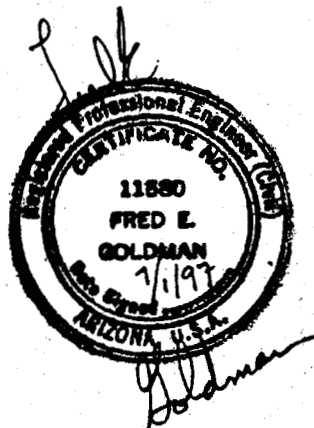
CONTAINS 3,568 ACRES, MORE OR LESS.



**CAAG 208 WATER QUALITY PLAN AMENDMENT**

**FOR**

**PALO VERDE UTILITIES COMPANY**



**GOLDMAN, TOY & ASSOCIATES, INC.**

**Consulting Engineers**

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Phoenix, Arizona 85015

TEL (602) 246-7759

FAX (602) 246-7645

July, 1997

## **1.0 INTRODUCTION**

The purpose of this report is to provide planning information to the Central Arizona Association of Governments (CAAG), the designated 208 planning agency for Pinal County, to evaluate a proposed plan amendment to the "208 Areawide Water Quality Management Plan Update". The scope of the report is structured to meet the requirements of the "208 Amendments Checklist" which is part of the "Continuing Planning Process" document issued by ADEQ in April, 1993.

The report will provide planning information on the proposed Rancho El Dorado development near Maricopa in Pinal County, Arizona, to be served by the proposed Palo Verde Utilities Company sewage management facilities, as shown in Exhibits 1 and 2. The master plan for the development and the proposed sewage management facilities are presented herein.

## **2.0 LOCATION AND PROJECT DESCRIPTION**

Rancho El Dorado is located within the northwestern portion of Pinal County within Sections 13, 14 and 15 of Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian. It is located adjacent to the Gila River Indian Community to the north, John Wayne Parkway / SR 347 (formerly Maricopa Road) to the west, Smith-Enke Road to the south, and White-Parker Road to the east. The unincorporated town of Maricopa is located approximately two miles to the south. See Exhibit 1.

Rancho El Dorado is a master planned family oriented golf community of approximately 1,616 acres and will include a variety of residential / retail / school / open space and other support uses. A total of 5,979 single family and 550 multi-family residential homes are planned along with 47.5 acres of retail uses. Three elementary schools, one junior high school, an 18 - hole golf course, 25 acres of lakes, and over 100 acres of parks and landscaped parkways are also included. A wastewater management facility will be provided that will meet the needs of the entire master planned area with a reserve for some additional residential development surrounding the project.



The property is currently agricultural and the farming operations will be phased out as development occurs. Development will be phased in a direction generally moving from west to east. The build out of the plan is expected to occur over a 10 to 20 year period, depending upon local and national market and economic factors. Construction is planned to begin in early 1998 with occupancy of first phase homes scheduled for the third or fourth quarter 1998.

The project is bisected by the Santa Rosa Wash which flows from south to north and is a tributary of the Gila River. The confluence of the Wash and the Gila River occurs about 13 miles northwest of the project. The Santa Rosa Wash joins the Santa Cruz Wash just north of the project. (See Figure 1.)

### 3.0 EXISTING CONDITIONS

The site and surrounding area is agricultural in nature. There are no existing wastewater treatment facilities in the surrounding area. The existing three residences on the property utilize septic tanks and leach fields. Two of the three existing homes will be demolished. The third home will be connected to the wastewater management facility when it becomes available. There are no Arizona Corporation Commission certificated areas in the adjacent townships.

There are nine production wells within the Rancho El Dorado property. Four of these wells were tested in order to establish if the property could achieve a 100-year assured water supply. A study was conducted in April, 1997 by Southwest Groundwater Consultants, Inc. and the results reported in a report entitled "Hydrogeologic Investigation." The report determined that there exists an adequate 100-year assured water supply for Rancho El Dorado.

In addition, the same four wells were pump tested for quantity and quality. Chemical analysis was performed on water samples by American Environmental Network, Inc. in early 1997. Three of the four wells (with three wells needed to supply Rancho El Dorado) sampled produced water which was well within the standards for drinking water. While much of the surrounding area well water has tested high in

nitrites, the three wells designated for Rancho El Dorado were all below 6.4 mg/l, well below the maximum 10.0 mg/l standard for drinking water.

A wastewater company - Palo Verde Utilities Company, and a water company, Santa Cruz Water Company, are in the process of being formed to serve Rancho El Dorado. Both Palo Verde Utilities Company and Santa Cruz Water Company are currently seeking a Certificate of Convenience and Necessity (CC&N) from the Arizona Corporation Commission in order to provide wastewater and water services for Rancho El Dorado. The requested CC&N area for the Palo Verde Utilities Company is shown in Exhibit 3. The water and wastewater utility companies will be registered with the Arizona Corporation Commission. The utilities are in the application process and have requested that a franchise be authorized and granted by Pinal County. Approval of the applications will grant Palo Verde Utilities Company and Santa Cruz Water Company the rights and authority to implement the plan outlined herein. The amendment will be approved and is subject to the issuance of the CC&N by the Arizona Corporation Commission and franchise by Pinal County.

It is anticipated that, over the next 10 to 20 years, additional residential development will occur within a 3 mile radius area to the west and south of the Rancho El Dorado development. To serve this future development, the water utility may increase its delivery and storage capacity and the sewage utility may increase the size of the central treatment facilities to a total treatment capacity of 2.25 MGD. This is based on 1.50 MGD for the Rancho El Dorado project and an allowance of 0.75 MGD for additional expansion of the existing plant during Stage IV, making a total plant capacity of 2.25 MGD.

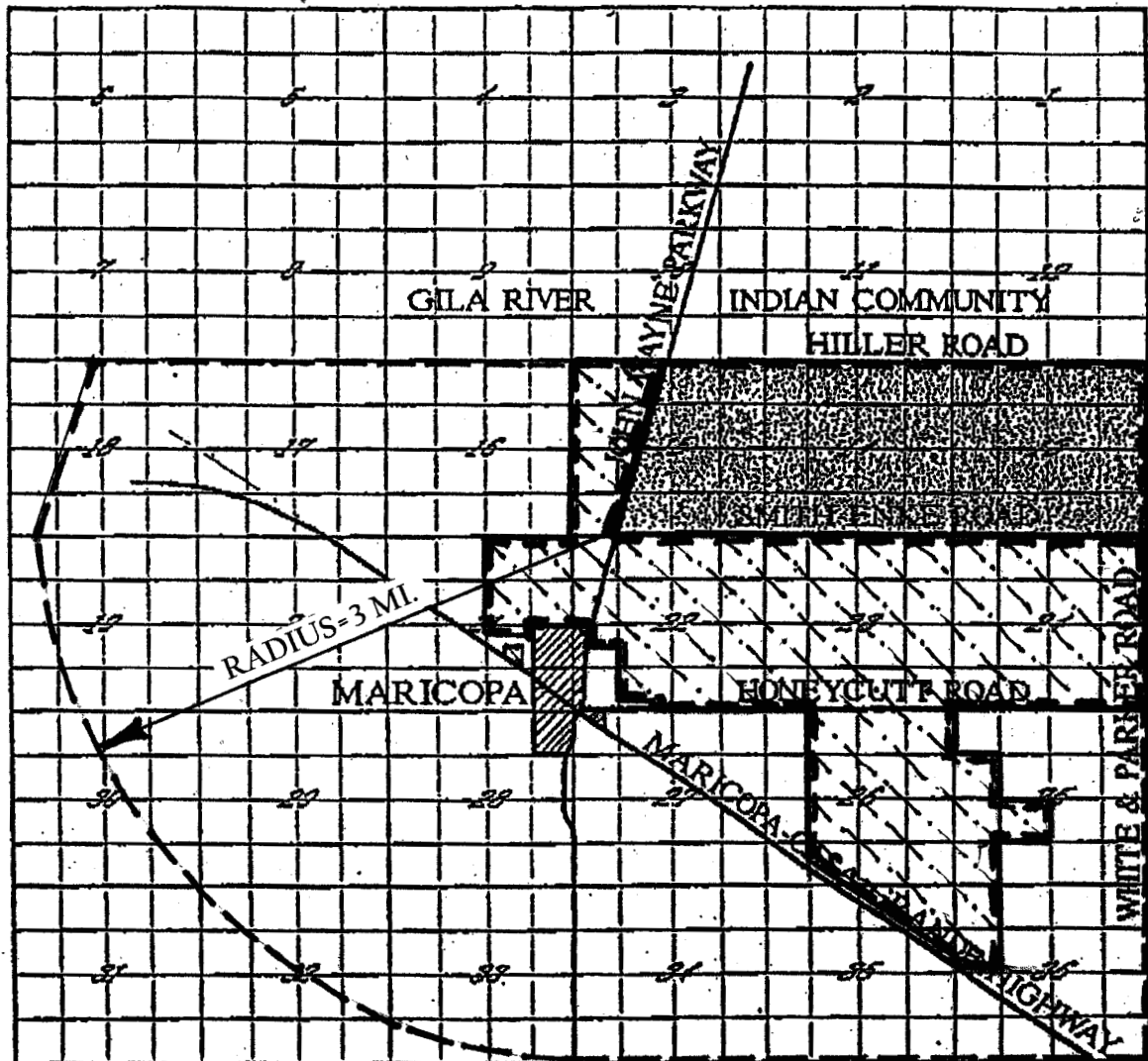
#### **4.0 WASTEWATER FLOW PROJECTIONS**

The Rancho El Dorado Project is a residential planned area development consisting of a total of 6,529 residential units. Using an average occupancy rate of 3 persons per residence and assuming an average of 300 homes will be constructed per year yields the following 20 year population projection:

# PINAL COUNTY, ARIZONA

Exhibit 9

TOWNSHIP 4 SOUTH, RANGE 3 EAST



EXISTING CC&N AREA



PROPOSED CC&N EXPANSION AREA



CAAG 208 BOUNDARY

PALO VERDE UTILITIES  
COMPANY

